

REMARKS

This Supplemental Response responds to the Notice of Non-Compliant Amendment mailed August 4, 2008. In the Notice of Non-Compliant Amendment the Examiner stated that claim 26 was missing a status identifier. Applicant has added a status identifier to claim 26 to address the Examiner's objection.

Applicant has included herein all claim amendments, remarks, and arguments from the previously submitted response under 37 C.F.R. § 1.111 dated March 18, 2008.

Claims 1-14, 16-36, 39-40, and 65-79, and 81-89 are pending. Claims 1, 16, 26-28, 31, 33, 39, 66 and 81 have been amended. Claims 15 and 80 have been canceled. Reconsideration of the present application is respectfully requested.

Claim Rejections Under 35 U.S.C. § 112

Claims 39 and 40 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claim 39 has been amended to remove the "being adapted to" language, and withdrawal of the rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. § 101

Claims 1-25 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. As reflected at paragraph 179 of the published application, for example, the gateway can be implemented with a computer system ("computer system deployed as the iPPG . . ."). Claim 1 has been amended to positively recite that the gateway comprises a processing system and a memory coupled to the processing system. Withdrawal of the rejection is respectfully requested.

Claims 39-40 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. The preamble of claim 39 has been amended to recite a "computer readable medium" in place of a "computer useable medium," and withdrawal of the rejection is respectfully requested.

Claims 66-89 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. This rejection is moot in light of the amendment to claim 1, and withdrawal of the rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 8, 13-14, 18, 21-23, 25, 66, 73, 78-79, 83, 86-87 and 89 stand rejected under 35 U.S.C. § 103(a) over Pyhalammi et al. (U.S. Publication No. 2006/0073810) in view of Corts (U.S. Publication No. 2002/0095228). Claim 1 has been further amended, and it respectfully submitted that claim 1 is patentable over the applied references.

Independent claim 1 has been amended, and it is respectfully submitted that, even if the Office's hypothetical combination were made for the sake of argument, the result would not yield the combination of features recited in claim 1. Claim 1 recites a gateway for scheduling over the air transmissions of data content. The gateway comprises a processing system and a memory coupled to the processing system. The processing system comprises a network inbound queue for the reception of instructions from a content provider related to data content; a scheduler for processing said instructions from the content provider to determine broadcast times and schedule for said data content to be received by a digital radio broadcast receiver of a user, wherein the scheduler determines said broadcast times and schedule based upon said instructions from the content provider without any user request for said data content. The processing system also comprises an encoder for encoding said data content for digital radio broadcast transmission; an addressing module for processing said instructions for extracting addressing information; and an outbound queue for storing said encoded data content.

The system recited in claim 1 is vastly different from the system described in Pyhalammi. As noted at paragraphs 7 and 16 of the present application, for example, the user of a digital radio broadcast receiver receives digital signals that are broadcast over radio waves and that are accessible by a wide population of digital radio broadcast receivers, such as iBOC enabled receivers. The users of digital radio broadcast receivers do not submit requests for content that they wish to receive via digital radio broadcast transmission – they simply tune into a radio station. As noted at paragraph 4 of the present application radio broadcast transmission of this type is a push technology since information is sent out regardless of whether or not anyone is tuned in.

In contrast, Pyhalammi discloses a method for delivering mobile content over a cellular wireless network wherein a user of a hand-held wireless device, such as a cellular phone equipped to access information from the Internet, actively submits a request for content, and that content is then transmitted to the user in response to the user's content request. (See, e.g., Pyhalammi at paragraphs 7, 20.) This form of communication is pull technology, since the communication involves requesting data from another source. As

noted at paragraph 6 of the present application, "Pull refers to requesting data from another program or computer. The opposite of Pull is Push, where data is sent without a request being made." Thus, the pull-type radio communication in Pyhalammi's system is vastly different than the push-type digital radio broadcast of the present application. The user's active request for content is central to Pyhalammi's system:

In a preferred embodiment of the invention there is provided a system and method whereby a user who has requested content selects a class of delivery for the content Pyhalammi at paragraph 6 (emphasis added);

In a preferred embodiment, a user's content request is sent to a Content/Service Provider which creates a content delivery message with the requested information including the content and delivery class. Pyhalammi at paragraph 7 (emphasis added);

The end-user locates content he wishes to receive via a browsing screen 31 on his wireless terminal device 30. On the screen, the end-user selects the content and the desired class of delivery. Pyhalammi at paragraph 22 (emphasis added);

User browses content via wireless terminal device. Pyhalammi, Fig. 4, Step 40 (emphasis added);

User orders content. Pyhalammi, Fig. 4, Step 41 (emphasis added).

Claim 1 has been amended to highlight the above-described distinction, and recites that the scheduler determines said broadcast times and schedule based upon instructions from the content provider without any user request for said data content. The user of the digital broadcast receiver does not select particular data content for transmission to the receiver, does not submit a "content request" or make any other request for content to be received by digital radio broadcast transmission, and has no role in impacting the time of digital radio broadcast transmissions. Thus, even if the Office's hypothetical combination were made, the result would not yield the combination of features claimed. Withdrawal of the rejection and allowance of claim 1 is requested for at least this reason.

The Office Action at page 20, paragraph 77 in response to Applicant's prior arguments states, "the delivery class is automatically selected based on the user selected content . . ." (Emphasis added.) As noted above, claim 1 has been amended to reflect that the scheduler determines said broadcast times and schedule based upon said instructions from the content provider without any user request for said data content. Thus, the Office's

remarks acknowledge the fact that content in Pyhalammi's system is user-selected, and thus acknowledges this distinction compared to claim 1 as now amended.

In addition, in rejecting claim 1, the Office Action at page 4, paragraph 11 cites paragraph 23 of Pyhalammi for allegedly disclosing the "the reception of instructions related to data content." However, this paragraph does not relate to the receipt of instructions from a content provider, but instead relates to creation of message by a content provider for delivery to the user of the hand-held wireless device. In fact, paragraph 22 of Pyhalammi, which provides the prefatory material for paragraph 23, explicitly states: "The end-user locates content he wishes to receive via a browsing screen 31 on his wireless terminal device 30. On the screen, the end-user selects the content and the desired class of delivery." Thus, to the extent that instructions are received in Pyhalammi's system for determining broadcast times and schedule, those instructions are received from the end-user the hand-held device in Pyhalammi's system, not from a content provider.

Thus, for at least the above-noted reasons, and for other reasons already of record, withdrawal of the rejection and allowance of claim 1 is respectfully requested. Claims 8, 13-14, 18, 21-23, 25, 66, 73, 78-79, 83, 86-87 and 89 are allowable at least by virtue of their dependence from claim 1.

Should the Examiner disagree with Applicant's comments above and believe that these claims are unpatentable over the same combination of references, the Examiner is respectfully requested to contact the undersigned before issuing another office action so that this matter can be discussed in a personal interview with the Examiner.

Claims 5, 15-16, 20, 26, 39, 65, 80-81 and 85 stand rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Garrity (U.S. Patent No. 6,745,237). Independent claims 26 and 39 have been amended in a manner similar to that for claim 1, and Applicant submits that the claims 26 and 39 are patentable over the Office's combination of applied references.

In rejecting independent claims 26 and 39, the Office invokes the rejection as applied to claim 1, and relies upon Garrity for the alleged disclosure of an authenticator. As such, even if the Office's hypothetical combination were made, the Office's reliance upon Garrity would not make up the for deficiencies of Pyhalammi and Corts as described above with regard to claim 1. Thus, withdrawal of the rejection and allowance of independent claims 26 and 39 is requested for at least these reasons. Claims 5, 15-16, 20, 65, 80-81 and 85 are allowable at least by virtue of dependency.

The Office Action includes further rejections of various dependent claims in view of other combinations of applied references and in view of Official Notice:

claims 2, 3, and 67-68 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Miller (U.S. Publication No. 2003/0055977);

claims 4 and 69 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Hirayama (U.S. Publication No. 2006/0069718);

claims 9 and 74 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Kadyk et al. (U.S. Patent No. 7,046,691);

claims 10, 17, 24, 75, 82 and 88 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Official Notice;

claims 11 and 76 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Marlow (U.S. Publication No. 2003/0046670);

claims 12 and 77 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Ellis et al. (U.S. Publication No. 2004/0194131);

claims 19 and 84 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Thompson et al. (U.S. Patent No. 6,907,247);

claims 6-7 and 71-72 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and Hirayama and further in view of Lin et al. (U.S. Publication No. 2002/0146016);

claim 70 was rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and Hirayama and further in view of Garrity.

Applicant respectfully submits that rejections of these claims are either moot or overcome by the amendments to claims 1, 26 and 39, from which various ones of these claims depend. The Office's reliance upon these secondary references does not make up for the deficiencies of Pyhalammi and Corts discussed above with respect to claim 1.

Conclusion

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Application No. 10/007,338
Supplemental Response dated August 26, 2008

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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